

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

5:07CV38-1-V

5:05CR9-13-V

ANTHONY McCLELLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

THIS MATTER comes before the Court upon Respondent's Motion to Reconsider, filed May 10, 2007.

On March 29, 2007, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence alleging, among other things, that his counsel was ineffective for failing to file a notice of appeal when he had been requested to do so. In accordance with this Court's practices, the Court granted Petitioner's ineffective assistance of counsel claim based upon his counsel's alleged failure to file an appeal when requested to do so and dismissed without prejudice the remainder of Petitioner's Motion to Vacate. To allow the Petitioner to appeal, this Court also ordered that the original criminal judgment be vacated and directed the Clerk to enter a new judgment from which an appeal could be taken.

While Petitioner's criminal case was on direct appeal at the Fourth Circuit, Respondent filed a Motion to Reconsider attaching a waiver form signed by Petitioner

less than ten days after the entry of Judgment in his criminal case in which he indicates that he had been advised of his right to appeal; the time period within which he must file a notice of appeal; and his counsel's belief he had no meritorious issues for appeal and that he decided not to file an appeal. As Petitioner's criminal case was pending on appeal to the Fourth Circuit Court of Appeals, this Court declined to rule on Respondent's motion at that time and ordered that the motion be held in abeyance.

A review of the Fourth Circuit's docket reveals that on May 5, 2008, the Fourth Circuit issued an opinion affirming Petitioner's sentence and conviction and dismissing Petitioner's appeal. In light of the Fourth Circuit's decision, Respondent's Motion to Reconsider is moot and is denied on that basis._____

THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Reconsider is **DENIED as moot**.

Signed: May 21, 2008



Richard L. Voorhees
United States District Judge

